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OFFICE OF PETITIONS

In re Application of	:	
Warren Roach et al.	:	
Application No. 09/957,459	:	ON PETITION
Filed: September 21, 2001	:	
Attorney Docket No. 166.0001	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 2, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned as a result of the petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20 (b) within the time period provided in 37 CFR 41.37 (a) (1). As an appeal brief (and appeal brief fee) was not filed two (2) months of the notice of appeal, filed March 11, 2008, and no extension of time under the provisions of 37 CFR 1.136 (a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197 (b). As no claim was allowed, the application became abandoned on May 12, 2008. See MPEP 1215.04.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (1).

The application became abandoned for failure to timely file an Appeal Brief in accordance with 37 CFR 41.37. The proposed reply required for consideration of a petition to revive must be an Appeal Brief (an appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53 (b). See MPEP 711.03(c)(III)(A)(2). The Notice of Appeal submitted with instant petition is not a proper response, because a Notice of Appeal (and the required fee) had been previously submitted.


Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
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By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
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The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Zohreh Fay at (571) 272-6051 or in her absence to the undersigned at (571) 272-7099.


David Bucci
Petition Examiner
Office of Petitions